City of Lafayette
City Council Regular Meeting
Redevelopment Agency Special Meeting
Public Facilities Finance Authority Special Meeting

MINUTES

Lafayette Community Center – Manzanita Room
500 St. Mary's Road, Lafayette, California

October 14, 2008
6:30 p.m.

1. CALL TO ORDER

Mayor Anderson called the meeting to order at 6:30 p.m.

2. ROLL CALL

Present: Council Members: Mayor Anderson, Vice Mayor Tatzin, Councilmembers Andersson and Federighi

Absent: Anduri

Staff: Steven Falk, City Manager; Tracy Robinson, Administrative Services Director; Ann Merideth, Community Development Director; Jennifer Russell, Parks, Trails & Recreation Director; Greg Wolff, Senior Planner; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

3. PLEDGE OF ALLEGIANCE - led by Mayor Anderson.

4. ADOPTION OF AGENDA

Vice Mayor Tatzin requested an emergency item be added as Item 11.C.; Letter to General Electric regarding public safety concerns, as it came to the Council's attention after the posting of the agenda.

ACTION: It was M/S/C (Tatzin/Andersson) to add Item 11.C. as an emergency item to the agenda: Letter to General Electric Regarding Public Safety Concerns. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

ACTION: It was M/S/C (Tatzin/Andersson) to adopt the agenda, as amended. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

5. PUBLIC COMMENTS

JUDY WALTERS, President of Diablo Valley College, spoke about the college's connection to Lafayette, introduced Marketing and Communications Director Chris Ann Dock who is a Lafayette resident and recognized others present who have attended DVC. She discussed DVC's state ranking, UC transfer mission, intercollegiate athletic program, career technology, and Contra Costa County high educational attainment.

LYNDA ROTUNDO provided an update on the Stanley Boulevard Springbrook Road traffic calming project or the Acalanes Valley and Ridge Fundraising and Community Building project, stating their goal is to raise $30,000 which will be matched by $70,000 from the City of Lafayette for the traffic calming project. She discussed their numerous fundraising activities in various phases of their program, support from local businesses, said they are currently at $19,000, said their website is www.acalanesvalley.com, they make available newsletters and other communication tools, and thanked the City for their continued support.

JADE TOMA discussed the Acalanes Valley and Ridge fundraising results and asked for an extension of time for the project in order to be able to continue to raise funds.

GUY ATWOOD suggested the City consider honoring Hans Lorraine, the speed climber who just set a world's record and lives in Lafayette.

6. PRESENTATIONS

A. Introduction of Molly Cohen, Senior Services Assistant
Recommendation: Receive and file.

Parks, Trails and Recreation Director Jennifer Russell introduced Molly Cohen, Senior Services Assistant and welcomed her to the City of Lafayette.

B. Parks, Trails & Recreation Commission and the Community Center Foundation Update on goals and accomplishments
Recommendation: Receive and file.

Peter Read, Chair of the Parks, Trails and Recreation Commission, started off a PowerPoint presentation on the Commission's goals and accomplishments, mission, recreation programs, sign program.

Jeff Peacock Trails Subcommittee, reported on the Trails Subcommittee Goals and Accomplishments including: construction of a trail on city property adjacent to Murray Lane; the status of the Burton Ridge Trail and the completion of the bridge on the Walter Costa Trail.

Parks, Trails & Recreation Director Jennifer Russell reported on the Community Center Foundation Goals and Accomplishments which included information on fundraising and major Foundation events. She also talked about the benefits offered by the many recreation programs and facilities.

Carol Singer, Parks Subcommittee, presented goals for 2008/09 as: 1) to complete the Citywide parks master plan including interaction with the Downtown Strategy Committee; 2) upgrade and expand the children's play area at the Community Park; 3) pursue the purchase of the Olympic Boulevard property from the County; and 4) continue to work on policies, procedures and publicity to enhance the development and use of the City's parks.

She discussed the Parks Master Plan public feedback survey and responses which revealed that 92% want more development and acquisition of parks and recreation facilities. There was a high priority for more sports fields, downtown parks and for an off-leash dog park. She said the goal is to have City Council approval of the master plan before July 1, 2009. She said another goal is to redo the children's play area in the south end of the Community Park and she discussed project work, said the current CIP was approved by the Council on June 9th and the Commission is currently evaluating its near term project commitment based upon projected

revenues under the new park fee structure and the economic outlook and the outcome of Proposition WW; the East Bay Regional Parks Bond Measure. If passed, the City should receive $1,095,183 million for parks and recreation projects. She said there is potential for grants including previous state bond monies and the potential for community donations.

Regarding meeting future needs, she said for years bike riders have built unauthorized jumps within parks and creek beds. The popularity of the sport has grown and the Commission has decided to investigate the feasibility of creating a Lafayette Bike Park. She said there has been a lot of damage done through the unauthorized uses and they are working with riders to locate a BMX court, currently looking at a site north of the ball field which has an existing emergency access road, water line, trail access and access to the park amenities. She said the riders are very excited with the location and want to build it themselves.

Councilmember Federighi questioned the estimated completion date for playground improvements to the Community Park, and Ms. Russell noted they hope to have it completed by the end of the fiscal year, which was dependent upon the weather.

Councilmember Federighi said what she did not see on the list was looking to build a neighborhood park in the north end of town, and Ms. Russell said this will be forthcoming in Phase III of the park master plan and noted that the preliminary survey results showed some surprises on this question.

7. OLD BUSINESS

8. STAFF REPORTS

A. **Tracy Robinson, Administrative Services Director**
Redevelopment Tax Allocation Bonds Series 2008
Recommendation: Adopt Resolution 2008-042 authorizing the issuance and sales of RDA Tax Allocation Bonds Series 2008.

B. **Approve the issuance, sale and delivery of the Lafayette Redevelopment Project Tax Allocation Bonds, Series 2008 and approving (1) The Bond Purchase Agreement (2) Indenture of Trust (3) The Official Statement (4) Continuing Disclosure Certificate**
Recommendation: Adopt Resolution R2008-04 approving the issuance, sale and delivery of the Lafayette Redevelopment Project Tax Allocation bonds, Series 2008 and approving the following document, in preliminary form: (1) The Bond Purchase Agreement (2) First Supplemental Indenture (3) The Preliminary Official Statement and (4) Continuing Disclosure Certificate.

C. **Approve the Public Facilities Financing purchase and sale of the Lafayette Redevelopment Project Tax Allocation Bonds, Series 2008**
Recommendation: Adopt Resolution PF2008-01 (JPA) approving the Public Facilities Financing purchase and sale of the Lafayette Redevelopment Project Tax Allocation bonds, Series 2008.

City Manager Director Falk noted the presence of many students in the audience, and explained the Redevelopment tax allocation bond process, stating that one series of bonds was previously issued for the Library, and now another series is needed to complete construction. He said that the matter before the Redevelopment Agency is about issuing the next series of bonds. Mr. Falk

further noted the financial markets are in turmoil, which may or may not have an impact on the City issuing the bonds and introduced Ms. Robinson to provide the staff report.

Administrative Services Director Tracy Robinson said the City is in the process of issuing the second series of tax allocation bonds from the Redevelopment Agency for the library, had previously issued bonds in 2002 for the Veterans Memorial Building, had again issued bonds in 2005 for the first installment on the Library. She further confirmed that this financing has always been anticipated to complete construction on the Library.

Other sources for the Library include $11.8 million from a state grant, $9 million in private donations, $10 million from the first bond issuance, and $1.2 million from Redevelopment fund balances. She said another $10 million is needed in proceeds to finish the library. She said that the bond markets have been volatile over the last few months, but ironically in 2005 the markets were also volatile, however, that volatility benefited the City in that the RDA was able to issue bonds at extremely favorable rates of 4.8%; . rates now are closer to 6%-7%. Ms. Robinson noted Mark Curran from Piper Jaffray would also speak regarding the issuance. Even in the 6%-7% range, and given that the Redevelopment Agency debt has been re-rated from a BBB to an A rating, the City will probably have a shortfall in what is needed to complete the Library. The run rate of construction costs is about $1.1 million a month and this combined with the reimbursements that the City is receiving from the State grant will get them through mid-January before funds for construction run out.

Regarding how to bridge the gap, she said options the Agency should consider include: a loan from the parking and/or city offices fund and/or a possible loan from the Library Foundation. Staff anticipates that the next time they could go out for bonds would be 18 to 24 months and then the loans would be able to be repaid. After Mr. Curran's presentation, she asked the Council to consider adopting the resolutions in order to go to market expeditiously. There is one amendment to the RDA resolution 2008-04 and Eugene Clark Herrera from Orrick Herrington is present to discuss the amendment.

Councilmember Federighi asked for clarification between the bond rating as a Redevelopment Agency and the bond rating as a City. Ms. Robinson said even though the Council acts as the Redevelopment Agency, they are two separate entities responsible for debt in two different ways. As a City, with General Obligation bonds, it is an obligation of the City and those repayment funds could come from property taxes. Therefore, the City's debt rating is actually higher at AA. There may be only one other city in the County with as high a rating. Acting as the Redevelopment Agency where funds come specifically from property taxes within the smaller redevelopment area, which is younger, they had been rated BBB, but have been recently upgraded to an A rating.

Mayor Anderson referred to the two options in the staff report and he questioned which one was staff's recommendation. Ms. Robinson said she did not have a lot of information on whether the Library Foundation has the resources and she believed Vice-Chair Tatzin could speak in more detail to that option.

Councilmember Andersson questioned whether the Agency needed to wait an additional 18 months if it could do it now and he questioned the criteria for how long one can wait to raise additional money. Mr. Curran agreed the Agency has the capacity to sell now, it can wait one month, a week or six months, but once the financing is done, it would be 18-24 months before the Agency had the capacity to issue any more debt.

Mark Curran, Piper Jaffray, said the Council is being asked to approve all of the financing documents and give staff some general direction on selling bonds now. Eugene Clark Herrera from Orrick Herrington, drafted all of the key bond documents. He said for the proposed series 2008 bonds there are no increases in taxes in Lafayette, there is no impact to the General Fund, and the debt is secured only by the tax increment from the project area. He said it is a parity debt, and it extends and wraps around the existing debt to provide level debt service. The bonds are based on today's revenues, there is no gambling on the future growth, looking at how much assessed values may go up over time, there is no crystal-balling, the debt is based only on the revenues that are available today. The Agency is showing over 135% debt service coverage which is conservative.. Mr. Curran felt this is an excellent way to go and it mirrors the previous issues which have worked out very well. The debt is 30 years for funds that will be used for the Library, and the financing is exactly on schedule.

He said the process could not have been started earlier, because the Agency needed the most updated assessed value figures, then they had to go through the subordination process which required 40-50 days, and the last day for concerns was on Friday and this was successfully completed.

Mr. Curran said there is one minor change regarding making the bonds bank-qualified. He said there is a special section in the tax law that states if a public agency is going to borrow less than $10 million in a calendar year, the bonds can be "bank qualified" so that banks can invest in the bonds and get the tax exempt interest. Otherwise they cannot under federal law. Three months ago when they believed interest rates were going to be in the low to mid 5%, there was no question these would not be bank-qualified because they were going to be over $10 million. Unfortunately rates have gone up and they slid down under the $10 million threshold and they would like approval from the Agency to allow staff to designate them as bank-qualified if the financing ends up under $10 million. It costs the City nothing, it should save 5-10 basis points on the rate because the banks only buy the shorter maturity bonds, most of these bonds are out in the last 5 years of the term.

Mr. Curran said the subordination process was complete without any excitement or anyone challenging it. It has been straight-forward but recently other agencies throughout Northern California have had the process challenged, but Lafayette's was not, and he attributes that to Mr. Falk and Ms. Robinson who did a great job in putting the documents together and getting them out on time.

He said much more important is the Agency's upgrade to an A rating which is monumental for an agency of this size of 290 acres and he did not know any other agency in the state that has an A rating for a project area under 500 acres, which is a major accomplishment. He discussed the work for the rating agency presentation and he said he is delighted with the results.

He discussed the market turmoil, said he is optimistic and for the last four weeks he has told people that the markets need to calm down a little bit, we should see more stability, a lot of supply will get burned off and he felt it would be better "next week". There has been massive sell-off, interest rates went up across the board by 25-30 basis points, the market is filled with sellers and there are practically no buyers. Today was the bottom of the municipal bond market, and there were California AAA's going for rates above 7% which is unheard of. He said it is a great time to be a buyer and the proposed sale date would be about October 29th.

Mr. Curran discussed interest rates and generation of net proceeds, stating at a 6.5% rate the financing will generate about $8.25 million in net proceeds. At a 7% rate, it will generate about

$8.75 million, but at that level, the City is ±$2.25 million short. The City can carry that via a loan to the Agency on which the Agency would pay interest. If done now, it is realistic that the Agency could undertake another financing in 2 years to take that debt out. If the City must take the debt out before then because there was some calamity, it could do a subordinate financing at a relatively higher rate.

He said the municipal market daily rate for the strongest AAA munis, on September 15 was at 4.5%; on October 1st it was at 5.19%, and today it is at 5.94%. The Agency's financing is going to trade about 100 basis points above the AAA national scale for the most secure liquid muni in the country. He said the State is looking at paying 4.5% for 8 month money, which is remarkable. He said the financing will allow him to outperform what else is out there, but they cannot just beat the market and they do not know where the market will be in two weeks to several months, but he said there is some serious de-leveraging going on by a lot of the major mutual funds. People who run muni mutuals had $1 of their own money and borrowed $3-$4 more dollars, and then suddenly owned $4 of bonds for every $1 cash in it. As rates have run up, they see the value of that portfolio drop 15-20% which means the dollar is now worth 20 cents. Most of the products in the market now are older financings that are AAA insured, and those AAA have been downgraded to the point where the market values them as useless, so people are looking for the underlying rating. His company's advice to people is that leveraging will be taking place over the upcoming months it will probably leave the market in relative turmoil for at least the near term future of about 60-120 days. Their advice is that if the transaction can be done and the Agency can live with the rates, there is at least a 50/50 chance that the rates are going to be worse 4-6 months from now. No one knows where they will be a year from now. He said they have the option to pull the plug and decide to postpone the sale literally until the morning of the pricing.

Lastly, in this market the standard under previous financings has normally been to do 10-year call protection to lock in the higher rate. He cannot guarantee this, but they will do their best to try and structure the financing so it only has 7 or 8 year call protection, which will let the City get out of the higher rate 3 years sooner.

Vice Mayor Tatzin emphasized Mr. Curran's comments regarding market uproar over the next 90 days, felt it was always good to have money in the bank when things are tough, and the interest on these bonds is all above the cap so this does not affect the City's ability to do its normal projects. Vice Mayor Tatzin reiterated that these are reasons to proceed with the financing unless something horrific occurs.

Councilmember Federighi said if they can pull the plug at the last minute, would Mr. Curran recommend setting a ceiling for interest rates or is it 7.5%. Mr. Curran said 7.5% is in the documents tonight, it is an absolute cap. With approval, we should leave it at the 7.5% tonight and if things truly change dramatically between now and October 27, he might want to add the item to the agenda on October 27th and hoped he would not need to return to change it to 8%.

Vice Mayor Tatzin questioned the disadvantage of making it 8% tonight, and Mr. Curran said they will still work with staff to keep the rate down, but the Agency could approve it to go up to 8% tonight, but he is going to do everything to keep it under 7% if he can.

Mayor Anderson questioned what the proceeds at 8% would be, and Mr. Curran said they would be about $400,000 less than the $7.8 million. He confirmed with the City Manager that there is $2.5 million in the parking fund and $2.4 million in the City office fund which would be the area

to draw from, and that this could be for as long as two years when the City would do another bond issue.

Vice Mayor Tatzin provided an update with the Library Foundation, stating he had one meeting with the Treasurer, they are on the other side of this and trying to find places to make investments, and as an investment option for the money left over from the capital campaign and receipts for a portion of the Open Doors Open Minds Campaign, they are prepared to consider and recommend to their Board making this an investment as an additional loan that would be subordinate to the bond, but separate from our existing loan for $9 million, and do that for a one or two year period, and he said they have discussed $2 million.

City Manager Falk referred to the interest rate risk, stating these things are cyclical and while we have been in a period of very low interest rates for a long time, he recalled back in 1995, Mr. Curran sold the first round of road and drain bonds, the City was happy to achieve a rate of 6% at that time. So, the market is the market and we need to get the job done.

Councilmember Andersson said if rates go up further in a couple of weeks to the 7.5% or higher level, would the same characteristics still apply. Mr. Curran said if they go to an 8% level, it is a 100 basis points from where the market is today, and hopefully this would not occur in a two-week period. He said there is literally no way to do something before the 28th or 29th, there is enough of a story here with the rating upgrade and they want to be pre-selling this next week. He said he can be here on October 27th and can provide an update and they should know a lot more. If the market is cooperating at all, their goal will be to be in the market in the next 12-48 hours. The normal day to day volatility on munis traditionally would be 5-8 basis points a day. Back in March of this year when the first insurance crisis occurred, they were seeing daily volatility on the 30 year bonds into the 20 basis points per day range. They just got back up to that level in the last week and today they will go through 30 basis points. He said it will come in cycles and they will know more on the 27th.

Councilmember Federighi questioned what would be the disadvantage of the Agency holding 7.5% tonight and she questioned if it would impede Mr. Curran in going to market if they met again on October 27th. Mr. Curan said it would mean they would have to prepare an additional set of legal documents and do a little bit more work in preparation for changing the 7.5% to 8%.

Vice Mayor Tatzin said Ms. Robinson gave an estimate of how much the net proceeds would be for different interest rates, which showed a drop of about one million in the net proceeds from 6% to 7%. When Mr. Curran quotes an 8%, he was only about $500,000 down. Mr. Curan said this was the difference between 7.5% and 8%; every 50 basis points is about $450,000 to $500,000.

Vice Mayor Tatzin noted there were small edits he had to some of the forms, and he questioned what the deadline on getting comments to Mr. Herrera. Mr. Herrera said what is being presented are three resolutions of the different bodies, and changes should be discussed and made now, and they will be incorporated into the final documents. He said Ms. Robinson has already presented an amended version of the RDA Resolution 2008-04. Regarding the other documents, most important is the market disclosure, the supplemental indenture, the bond purchase agreement and continuing disclosure agreement, and all comments could be forwarded to Ms. Robinson who could forward them to him. The deadline for the form comments would be Friday.

Mr. Herrera said the City Council is required by law to approve any indebtedness of the Redevelopment Agency, the City Council's resolution is very simple and it approves an amount not to exceed $13 million in Redevelopment Agency debt. The Redevelopment Agency's Board Resolution contains the most substance and is the authorization for the Agency to incur an amount not to exceed $13 million in bond indebtedness, it delegates the Agency staff to authorize final changes to the principle contracts that govern the indebtedness, which have been presented in substantially final draft form, with the exception of pricing information about the bonds that will not be known until October 29th. There is also demographic data that are not yet included which they are still updating. He discussed the minor amended form changes in Section 3 on page 2 of the resolution. He added a new second paragraph in the section which provides that in the event bonds are issued in an amount of $10 million or less, then the Board is designating them as a qualified tax-exempt allocation, which would allow for a wider group of investors. If this is the case, an additional paragraph would be added to the POS, as well.

He discussed the documents the resolution approves, the Resolution approving the issuance, sale and delivery of the Lafayette Redevelopment Project Tax Allocation bonds, Series 2008, the Bond Purchase Agreement.

Vice Mayor Tatzin said to the extent that provisions are a risk, if we believe the Governor will re-think their State deficit and there is a possibility of the state taking more from the Agency, what would the Agency need to do as far as the disclosure. Mr. Herrera said the disclosure will be deemed final as of the date of its printing. On that date, they will take steps to ensure the document contains any information about the State's budget and impacts, and their finance team will confer and come to agreement as to whether they are accurately disclosing the material information to investors in that regard. After the point it is deemed final and the bonds have sold, if something happened materially to the investment decision, they would then decide to supplement the disclosure by making additional amendments via wire communication and it would be reflected in the final printed version. He said this rarely happens, but in this market, he would not rule that out.

Vice Mayor Tatzin said on 7-14 there is a reference to the bond insurance policy in brackets, and he asked if this would be deleted. Mr. Herrera said yes, this recommendation comes from Mr. Curran as to whether it is economic to the agency, which is highly unlikely.

Mr. Herrera further discussed the First Supplemental Indenture, and there were no questions of the Agency. Vice Mayor Tatzin referred to page 6 of the Preliminary Official Statement (POS), and confirmed it was a standard disclosure. He also noted a date which reflected January of 2006 which should be changed to January of 2009. He said the page that has all of the names on it, asked to spell Councilmember Andersson's name correctly, on the back of the page the 1st and 3rd paragraph; and suggested the 6 references to "City" be changed to "Redevelopment" as the correct agency. Mr. Herrera agreed they did pertain to the Agency.

Mr. Herrera said the final form is the Continuing Disclosure Certificate, a very technical document, which provides agreement to provide on-going updates to this market's disclosure to investors as an annual obligation.

Convene Redevelopment Agency and Public Facilities Finance Authority

ACTION: It was M/S/C (Tatzin/Andersson) to co-convene as the City Council, the Redevelopment Agency and Public Facilities Financing Authority. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

Agencymembers discussed 7.5% versus 8% and unanimously agreed to make the rate cap at 8%.

ACTION: It was M/S/C (Tatzin/Federighi) to adopt Resolution 2008-042 authorizing the issuance and sales of RDA Tax Allocation Bonds Series 2008. Vote 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

ACTION: It was M/S/C (Tatzin/Federighi) to adopt Resolution R2008-04, as amended, approving the issuance, sale and delivery of the Lafayette Redevelopment Project Tax Allocation bonds, Series 2008 and approving the following document, in preliminary form: (1) The Bond Purchase Agreement (2) First Supplemental Indenture (3) The Preliminary Official Statement and as amended (4) Continuing Disclosure Certificate. Vote 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

ACTION: It was M/S/C (Tatzin/Federighi) to Adopt Resolution PF2008-01 (JPA) approving the Public Facilities Financing purchase and sale of the Lafayette Redevelopment Project Tax Allocation bonds, Series 2008. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

Adjourn Redevelopment Agency and Public Facilities Finance Authority

ACTION: It was M/S/C (Tatzin/Andersson) to adjourn the Redevelopment Agency, the PFFA and reconvene as City Council . Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

8. PUBLIC HEARINGS

9. CONSENT CALENDAR

Vice Mayor Tatzin requested removing Items 10.B and 10.C. There was a request to speak on Item 10.N.

ACTION: It was M/S/C (Tatzin/Andersson) to approve Consent Calendar Items 10A, D, E, F, G, H, I, J, K, L and M. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

A. **City Council Minutes**
September 22, 2008
Recommendation: Approved.

D. **Request for encroachment agreement between property owner, Alan Ikeya and the City of Lafayette for a 3-foot picket fence, brick pillar mailbox, landscaping and irrigation at 3153 Indian Way. APN 237-042-002**
Recommendation: Approve encroachment agreement and authorize the City Clerk to record.

E. **Agreement relating for installation and maintenance of existing and new landscaping between property owners, William Vaughn and Maj-Brit Melugin and the City of Lafayette, for property located at 3581 Brook Street and 925 Oak Street. APN 241-190-003**

Recommendation: Accept agreement relating to installation and maintenance of existing and new landscaping and authorize the City Clerk to record.

F. **Agreement relating for installation and maintenance of existing and new landscaping between property owners, Lance Engeldinger and the City of Lafayette, for property located at 3518 Hamlin Road. APN 239-020-020**
Recommendation: Accept agreement relating to installation and maintenance of existing and new landscaping and authorize the City Clerk to record.

G. **Agreement relating for installation and maintenance of existing and new landscaping between property owners, Mark Lefanowicz and Katherine Lefanowicz and the City of Lafayette, for property located at 3372 Hermosa Way. APN 167-230-002**
Recommendation: Accept agreement relating to installation and maintenance of existing and new landscaping and authorize the City Clerk to record.

H. **E-mail from Pat Clarkson resigning from the Bicycle Pedestrian Advisory Committee**
Recommendation: Accept with regret.

I. **Letter from Gene Donaldson resigning from the Community Center Foundation**
Recommendation: Accept with regret.

J. **Letter from Richard W. Holt resigning from the Planning Commission effective December 31, 2008**
Recommendation: Accept with regret.

K. **2008 Mandatory Review of Conflict-of-Interest Code**
Recommendation: Receive and file.

L. **Status of City Investments**
Recommendation: Receive and file.

M. **Comments on Contra Costa Transportation Authority's Countywide Bicycle and Pedestrian Plan Update's Issues and Options Paper**
Recommendation: Receive and file.

Items Removed from Consent Calendar:

B. **Ordinance 580 of the City Council of the City of Lafayette to change the zoning from Single-Family Residential District 15 (R-15) to Multiple-Family Residential District-A (MRA) and to approve a Development Agreement for Lafayette Park Terrace, 18-unit condominium project on 2-acres located at 3235 Mt. Diablo Court**
Recommendation: Waive second reading and adopt Ordinance 580.

C. **Resolution 2008-35 of the City Council of the City of Lafayette adopting a Mitigated Negative Declaration and approving a General Plan Amendment, Vesting Tentative Map, Design Review, Tree Permit, and Grading Permit for Lafayette Park Terrace, an 18-unit condominium project located at 3235 Mt. Diablo Court conditions of approval**

Recommendation: Adopt Resolution 2008-35.

Vice Mayor Tatzin noted several letters before the City Council on the item and suggested holding public comment.

Public Comments:

RANDAL CASTRO, Pleasant Hills and Valleys Homeowners Association, asked the Council not to approve the Ordinance and postpone it for two weeks in order to clarify points on conditions of approval, specifically errors on Condition 8; in their last meeting, the developer indicated there was going to be a fence along the eastern side of the property, as Condition 7 shows the response to staff comment regarding public notification for Design Review, which enables that it be optional. He asked that Council postpone approval of the Ordinance in order to amend Condition 8. Secondly, their members are concerned with the multi-zoning and approval for 18 units when the property is zoned for 12 units. He reviewed notes and did not find any reason for the density increase other than the fact that the City supports it.

CAROL GRAY, referred to her late correspondence, believes the density is too high as well, but her main concern is that the current staff report and resolution fail to comply with what was discussed and agreed upon at the last City Council meeting.

GUY ATWOOD echoed Mr. Castro's request, said they have not had time to review conditions of approval, to comment on them, or suggest conditions consistent with the Council's actions, and feel most items should be stated as conditions rather than left in their current form. He also said the homeowners are finding difficulty in going to their members and trying to explain actions of the Council as it relates to the issue of density. He felt we should compare multi-family with multi-family and talk about whether 6-12 units is appropriate versus 18 units. They do not anticipate the Council will change its vote, but they would like clear reasons for proposing this density in order to understand and also relay that understanding to their association.

DEBORA PEVERADA said she does not oppose the Lafayette Terrace projects or amending the General Plan to increase the density, to date her neighbors or her have not been given any explanation for approving this change. At last month's Council meeting, the homeowners preferred the Council accept all 9 items presented as conditions of approval. This meant also reducing the building lowered an additional foot which meant the developer would bring it down in total by two feet. Staff has not made 7 of the 9 items as conditions of approval. She believed staff should stay impartial, none of the homeowners' concerns were ever taken into consideration by staff, and said they most definitely have windows facing the planned development and there will be significant impact to her Unit 31 home and Unit 30. It was also stated at last month's meeting that the revised changes the architect made did not have to go back to the Design Review Committee, but now because of fencing on the east end, staff is stating it would need to go back for review. She said there have been significant changes made to the project design without requiring additional public notice. She felt this enforces homeowners' beliefs that they have been ignored and staff has not fairly represented their concerns to the Planning Commission, DRC, and the City Council, and she supported the request to have the matter continued for another two weeks.

Vice Mayor Tatzin said it is his recollection that at the meeting, the issues of neighbors would be addressed and some are not appropriate for conditions of approval, i.e., the request for the signal timing.

SVETLANG YANKINA said she feels approval of the project is premature, asked that the items be made conditions of approval, she has not had a chance to review the proposal, and questioned why the project should be allowed to be built at 18 units.

AL MOORE, Representing applicant, Lafayette Park Terrace, said on September 22nd the Council voted to approve the General Plan amendment, rezoning and Tentative Map, he said the item has a right to be removed from the Consent Calendar, and the staff report accurately reflects the direction the Council gave staff. He did not believe staff was misrepresenting anything, and he opposed the item being continued another two weeks. He said they compromised on all items requested by the neighbors, Mr. Castro wrote him a thank-you letter, and now want them to make a change to what has been approved, and he respectfully requested the Council stand by its vote it took on September 22nd. He said people have indicated they have not had a chance to be explained the project, cited the numerous meetings with neighbors and hearings the project has endured, and felt it is unfair on the developer. He agreed to work with neighbors on the items and if the Council wants them added as conditions, he would also agree with this.

Vice Mayor Tatzin questioned the practical implication of having the matter return in two weeks, and Mr. Moore said this would be devastating, as he has moved forward with bankers for loans based upon the Council's approval and final reading this date.

Mr. Wolff said it was staff's understanding from the last meeting that neighbors put together a letter requesting 9 items, the developer agreed to part of those, the Council received agreement to 8.5 of the items and all have been addressed. Some of the items simply cannot be conditions of approval because the Council does not receive its authority from neighbors, and conditions will be addressed over the term of the project through the approved plans as well as those 8.5 items and said staff has not dismissed any of the 9 items.

Councilmember Federighi agreed with Mr. Wolff, but said the one item that she would question would be the fencing requirement. It does appear in the conditions of approval that it is optional, with wording that states, "If the applicant desires to install.." and she suggested tightening up this language. Mayor Anderson agreed this was Mr. Castro's concern. Mr. Wolff said the City Council could certainly amend this condition to state that the applicant "shall" install fencing on the east side. He said the fence might be more impactful with the downhill neighbor than not having a fence there. It is also the most visible component of the project from off-site and this is why staff recommended Design Review Committee review it, as well as the neighbors, and he believed there might be alternatives that may be less impactful.

Mayor Anderson felt the neighbors want to better understand how the items are going to be covered, and he questioned if there might have been a misunderstanding of the City's process. Mr. Wolf said the first request was to add a condition of approval to allow the nearby residents immediately to the east, south and north be included in a discussion and decision regarding landscaping as it impacts their property. He offered that at the last 23 public hearings, he has given such opportunity. Staff has not received specific comments on the landscape plan even as it currently stands. The landscape architect of the project has offered to meet with the neighbors out in the field to do final plant placement, but the landscape plan has been presented to the Council; however, he questioned if the City Attorney would want to comment on granting authority to neighbors for review and approval authority.

Vice Mayor Tatzin asked Mr. Wolff could draft an amendment to a condition which states that as plants are being put in, they will be meeting minor variations agreeable to neighbors and

developers will be exceptional without requiring or returning to the Design Review Board, and Mr. Wolff said staff could support this.

Mr. Wolff said Item 2 is to include in the process and ensure notice is given to the residents of Lafayette Pointe regarding final placement and use of the pocket park near Mt. Diablo Boulevard. He said the conditions of approval require review and approval of the design of the pocket park by the Design Review Commission, the Parks, Trails and Recreation Commission, amongst other entities. These are public hearings with public notice provided and staff believes this would satisfy the request.

Vice Mayor Tatzin asked if there is much option regarding placement of the park, and Mike Hollman said the park location is fairly very fixed, and placement was well received by several commissions, but there was question about how much landscaping there would be. At the appropriate time in the future, the actual design would be discussed and publicly heard.

Vice Mayor Tatzin thinks there is a provision that allows for this, and in conditions of approval, he would think that review and approval of the design shall be forwarded to the DRC or Parks, Trails and Recreation Commission, so everyone understands the process.

Mayor Anderson said condition D.2 refers to the pocket park and sidewalk design review, and he felt this condition addresses the comments made, and did not believe anything was missing.

Regarding Item 3, Mr. Wolff said it asks, please include in the process and ensure notice is given to the surrounding residents regarding any progress pertaining to the pathway from Mt. Diablo Court to Pleasant Hill Road. He said if and when the continuation of the pathway beyond the subject property is at design stage, the matter will be considered by the Circulation Commission and public notification would be provided, and staff believes this satisfies their request. Mayor Anderson confirmed this cannot be a condition of approval because staff does not know if it will occur. Mr. Wolff said also, staff does not believe it was appropriate to encumber this project with something beyond the project scope. If the City is able to get response to design documents, it would require public notification.

Mr. Wolff said Item 4 requests requiring public review with the appropriate City agency of the new proposed signal light, its timing and crosswalk once the signal light is installed and operational at Mt. Diablo Boulevard and Mt. Diablo Court.

He said the City Engineer and Circulation Commission can review the signal timing and operation of any signal in Lafayette at any time. The City Engineer will require the signal to be appropriately designed, with phasing such that eastbound and westbound traffic on Mt. Diablo Boulevard will receive green, unencumbered light until such time that a car is queued for turning movement into and our of Mt. Diablo Court. Mayor Anderson questioned the timing and responsibilities of the signal, and Mr. Wolff said the City sets the timing, the developer contributes funds toward its installation or half the cost, as well as design drawings which will be reviewed by the City Engineer, and the Council could condition that requires the City who operates the signal, to have the City Engineer review the timing immediately upon activation of the signal.

Councilmember Andersson said if it is not typical for public agencies to be involved, and Mr. Wolff said staff could draft the condition that requires the Circulation Commission to review the signal timing for that light once it is activated. Vice Mayor Tatzin said conditions of approval are generally things the applicant has to do, and he questioned the situation when the burden is on

a public agency. City Attorney Subramanian said this was also her concern with it being a condition of approval.

Mayor Anderson suggested that the condition could better read, the City makes the commitment to have the Circulation Commission available to review the signal as deemed fit, as necessary." Mr. Wolff recommended identifying who would be deemed fit and necessary or not necessary. Mayor Anderson reworded it by saying, the City commits to review it in the same way it warrants itself on other responsibilities." Mr. Wolff noted this will not be a condition of approval, but he could have a cross-referenced to it.

Mr. Wolff said Item 5 requests providing for review by the property owners to the immediate west and south of the building of the proposed final roofing materials and colors. Condition D.3 requires that these materials go to the Design Review Commission with public notification whereby any and all parties interested can offer comments. Staff believes this satisfies the request.

Mr. Wolff said Item 6 item asks to eliminate the outside patio on the southwest corner of the building, and Condition B.1(c) provides that the construction drawings not show the said patio.

Mr. Wolf said this item asks to add a condition of approval requiring a non-obtrusive security fence around the property to prevent trespassing to and from adjacent properties. He said any property owner can fence their property to local codes and secure their property from trespassers. No fencing was shown in the submitted plans with the exception that the project intends to have a fence along the eastern property line, the location and design of which will go before the Design Review Commission with proper notification. If the applicant desires to install a fence not on the approved plans, it would go back to the Design Review Commission and staff believes Condition G.1(b) addresses this concern.

Vice Mayor Tatzin questioned if a condition could be written up to say the applicant has agreed they are interested in installing a fence. Mr. Wolff said this evening, testimony was heard from the developer that they intend to have a fence on the east side and it is staff's understanding that the fence would be placed around the entire property. Vice Mayor Tatzin said a fence can be on the property line, and he questioned Ms. Gray as to her desire for this, as her house is quite close to the property line, and Ms. Gray said she did want the condition.

Mayor Anderson therefore asked staff to include wording to indicate that we would like the fencing to be considered around the entire perimeter and reviewed by the Design Review Commission.

Vice Mayor Tatzin said another comment related to the underlying density which changes it from a single family zone to a multi-family zone. He said Exhibit A to the resolution is referenced and it discusses this, but he voiced concern with the incompleteness of documents the Council is relying on to approve the resolution, as Exhibit A is not in the packet.

Mr. Wolff said staff could provide this to the Council, and City Attorney Subramanian believed one alternative would be to continue the item and staff will also add recommended changes. Vice Mayor Tatzin said if this were going to be done, he would propose continuing it to a special meeting as opposed to one in two weeks.

Councilmember Federighi said the underlying decision has been made, and Vice Mayor Tatzin felt Exhibit A indicated explanation which would be helpful to neighbors.

Mayor Anderson questioned if the Council would proceed tonight or continue it to a date certain. Vice Mayor Tatzin questioned if there was an issue not having Exhibit A in the packet, and City Attorney Subramanian suggested having the City Clerk go to the office, print out copies, review and approve the item.

BREAK
Mayor Anderson called for a five-minute break, and thereafter reconvened the meeting.

Mr. Wolff presented Exhibit A, stating the document was published for the Council on July 28th, it had not changed since that date, and it is before the Council.

Vice Mayor Tatzin said questions had been asked by neighbors earlier about what they could tell neighbors about decisions the City had made to change the density to allow 18 units where the previous underlying zoning allowed for 12 units. He said Exhibit A explains why the Council thinks the change should be allowed.

Mayor Anderson felt some assumptions or ideas were not acceptable by some neighbors, and asked if there was further public comment.

Public Comments:

GUY ATWOOD said he wanted the record to reflect homeowners are on record as having opposed all of the things reflected in the Exhibit, realized the project has gone on for three years, they were not here to delay the process but did want to discuss them at some time in the future.

RANDAL CASTRO said again, their homeowners voice concern that if they allow multi-family on this site, it may creep onto Pleasant Hill Road and other properties purchased by a developer, and the same density could be requested. He asked if there was anything that could keep this from happening.

Vice Mayor Tatzin said this Council cannot bind future Councils. Whoever is sitting on the Council when a request is made for an amendment to the General Plan, the same public process will be used. The General Plan is designed to be difficult to change, but not impossible. Therefore, he felt the continued participation of citizens may accomplish his goal.

Councilmember Andersson acknowledged that those who have participated in this project have changed it considerably, practically, one must look at conditions and parcels surrounding it, but it would not be the identical situation and he agreed the General Plan is difficult to change.

ACTION: It was M/S/C (Federighi/Tatzin) to adopt Resolution 2008-35, adopting the mitigated negative declaration and approving project subject to conditions, as amended: Refer the pocket park item to Parks, Trails and Recreation Commission; refer the signal timing item to the Circulation Commission; if the pathway on the plans is proposed, it will be considered by the Circulation Commission, amendment of conditions to include language regarding fencing as G.1(b); that the Council would require the developer to design and apply for approval for fencing for review and approval by the Design Review Commission; and a new condition of approval that requires the project landscape architect to meet with neighbors on site as condition D.1(d), and to further amend Resolution 2008-35 to add another section that would state that the City

would accept responsibility for comments 2, 3 and 4 of the neighbor's suggestions. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

ACTION: It was M/S (Federighi/Tatzin) to waive second reading and adopt Ordinance 580. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

N. **Proposed Projects for Miscellaneous Grant Application Submittals**
Recommendation: Receive and file.

Public Comments:

MARY MLYNEK, Stanley Springbrook Neighborhood Action Team, spoke about the need for more sidewalks on the Safe Route to Schools project, said their neighborhood is fully dedicated to have safe sidewalks, and provided an update on their project, stating they are working on their goal of $30,000 for the City to match $70,000 and they hope by the end of the month, they hope to have more funding.

11. COUNCIL/COMMISSION REPORTS

A. **Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.**

B. **Councilmembers Brandt Andersson and Carol Federighi**
Report from League of California Cities Conference
Recommendation: Receive and file.

Councilmember Federighi reported on the League of California Cities Annual Conference, said she received presentations on affordable housing, pro's and con's of creating a City blog, a session on Going Green, and a discussion on the selection of a person's residence and what makes people the happiest about where they live, a presentation from an author of a book on the life of Abraham Lincoln, and the resolutions session.

Councilmember Andersson reported on his attendance, as well, and talked about a presentation on how economic growth occurs when people cluster together, a presentation about getting tax measures passed, a session on relationships between Council and staff, high performing cities, and another session on Make your Comfy Clothes Like Your Suit, and a session on Joint Use Facilities with an example provided in San Jose.

C. **Letter to General Electric regarding public safety concerns.**
Recommendation: Direct staff.

Vice Mayor Tatzin said on October 4, Saturday Night Live ran a segment of a show in which they depicted a number of people talking about the Federal Rescue appeal and two people were residents of Lafayette. There was a caption for where people should be shot, he presented a picture of it, and a few days later there was a posting on Craig's List referencing the segment and providing directions to these people's home in Lafayette. His proposal is to write a letter to the Chairman and CEO of General Electric complaining from a public safety aspect about this episode, including copies of letters to the Board of Directors who let the Governance Committee and the Public Affairs Committee, to the President of NBC and the President of Saturday Night Live asking them to explain what they will do to not allow this to happen again and tell us who they will hold accountable for this.

He presented a draft letter for the Council's consideration.

ACTION: It was M/S/C (Tatzin/Federighi) to direct the Mayor to send a letter to General Electric regarding public safety. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

12. WRITTEN COMMUNICATIONS

A. **Letter dated September 20, 2008 from Nick "The Greek" Ioannidis, Founder National Immigrants Day, requesting a proclamation proclaiming October 28, 2008 National Immigrants Day.**
Recommendation: Receive and file.

ACTION: It was M/S/C (Tatzin/Federighi) to receive and file. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

B. **Request dated September 24, 2008 from Lori McDonald, Contra Costa CAER Group, Inc., requesting a proclamation proclaiming November 5, 2008 Shelter-in-Place** Education Day.
Recommendation: Approve proclamation proclaiming November 5, 2008 Shelter-in-Place Education Day.

ACTION: It was M/S/C (Federighi/Tatzin) to approve the proclamation proclaiming November 5, 2008 Shelter-in-Place Education Day. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

C. **Letter received September 30, 2008 from Barbara Beratta, Daughters of the American Revolution Regent for the Mt. Diablo Chapter, requesting a proclamation proclaiming November as National American Indian Heritage Month.**
Recommendation: Approve proclamation proclaiming November as National American Indian Heritage Month.

ACTION: It was M/S/C (Federighi/Tatzin) to approve proclamation proclaiming November as National American Indian Heritage Month. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

D. **Letter received October 1, 2008 from Kathryn M. Kavanagh, Community Liaison Hospice of the East Bay, requesting a proclamation proclaiming November 2008as National Hospice/Palliative Care Month.**
Recommendation: Approve proclamation proclaiming November 2008as National Hospice/Palliative Care Month.

ACTION: It was M/S/C (Tatzin/Federighi) to approve proclamation proclaiming November 2008as National Hospice/Palliative Care Month. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

13. ADJOURNMENT

The City Council adjourned at 9:58 p.m. to Closed Session.

APPROVED:

Mike Anderson, Mayor

ATTEST:

Joanne Robbins, City Clerk

City of Lafayette
Special City Council Meeting
MINUTES

Lafayette Community Center – Manzanita Room **October 14, 2008**
500 St. Mary's Road, Lafayette, California **9:59 p.m.**

1. CALL TO ORDER

Mayor Anderson called the meeting to order at 9:59 p.m.

2. ROLL CALL

Present: Council Members: Mayor Anderson, Vice Mayor Tatzin, Councilmembers Andersson and Federighi

Absent: Anduri

Staff: Mala Subramanian, City Attorney

3. ADOPTION OF AGENDA

ACTION: It was M/S (Tatzin/Federighi) to adopt the agenda. Vote: 4-0-1 (Anduri absent).

4. PUBLIC COMMENTS – None

6. CLOSED SESSION

A. Public Employee Performance Evaluation (Gov. Code section 54957)
Title: City Manager

6. ADJOURNMENT

ACTION: It was M/S/C (Tatzin/Federighi) to adjourn the Special City Council Regular Meeting to the next regular City Council meeting on October 27, 2008. Vote: 4-0-1 (Ayes: Anderson, Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri).

APPROVED:

_____
Mike Anderson, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk